



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,731	11/21/2003	Richard Lauch	0127-083P/JAB	3536
22831	7590	12/13/2005	EXAMINER	
SCHWEITZER CORNMAN GROSS & BONDELL LLP			SPAHN, GAY	
292 MADISON AVENUE - 19th FLOOR			ART UNIT	
NEW YORK, NY 10017			PAPER NUMBER	

3673

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/719,731	Applicant(s) LAUCH, RICHARD	
	Examiner Gay Ann Spahn	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 3, the recitation of "the inner portions" lacks antecedent basis because it is not clear if "the inner portions" are referring back to "interior portions" or not and therefore the examiner suggests changing "the inner portions" to --the interior portions--.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under U.S.C. 102(b) as being anticipated by Campbell (U.S. Patent No. 3,481,643).

As to claim 1, Campbell discloses an escalator side truss assembly (see Fig. 1) providing a standing support for components of an escalator assembly, comprising a

Art Unit: 3673

corrugated panel (10) having interior and exterior portions, the inner portions having means (28) for supporting escalator components mounted thereon, and top and bottom stiffeners (12, 12) extending substantially the length of the corrugated panel (10) fastened to the corrugated panel (see col. 2, lines 48-50 wherein it states that "[t]he channels 12 are welded or bonded to the unit 10 at contacting parts thereof.").

The recitation of "escalator side truss" in the preamble is a statement of intended use and as such all the examiner need do is shown that the structure of the reference is capable of performing such intended use which Campbell clearly is.

The recitation of "providing a standing support for components of an escalator assembly" is also a statement of intended use and it is the examiner's position that the structure of Campbell is clearly capable of performing this intended use.

As to claim 2, Campbell discloses the side truss assembly of claim 1 as discussed above, and Campbell further discloses that the corrugated panel (10) has corrugation fold lines extending perpendicular to a length of the stiffeners (12, 12).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaver (U.S. Patent No. 6,079,168) in view of Campbell (U.S. Patent No. 3,481,643).

As to claim 1, Shaver discloses an escalator side truss assembly (see Fig. 12) providing a standing support for components of an escalator assembly, comprising a corrugated panel (28, 30) having interior and exterior portions, and top and bottom stiffeners (32, 32') extending substantially the length of the corrugated panel (28, 30) fastened (at 56, 56') to the corrugated panel (28, 30).

The recitation of "escalator side truss" in the preamble is a statement of intended use and as such all the examiner need do is shown that the structure of the reference is capable of performing such intended use which Shaver clearly is.

The recitation of "providing a standing support for components of an escalator assembly" is also a statement of intended use and it is the examiner's position that the structure of Shaver is clearly capable of performing this intended use.

However, Shaver fails to explicitly disclose that the inner portions of the corrugated panels have means for supporting escalator components mounted thereon.

Campbell discloses that the inner portions of the corrugated panel (10) has means (28) for supporting escalator components mounted thereon.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the escalator side truss assembly of Shaver by including the means for supporting escalator components mounted thereon as taught by Campbell in order to further strengthen the corrugated panel and provide better support and stiffness to the assemblage.

As to claim 2, Shaver in view of Campbell discloses the side truss assembly of claim 1 as discussed above, and Shaver further discloses that the corrugated panel (28,

30) has corrugation fold lines extending perpendicular to a length of the stiffeners (32, 32').

As to claim 3, Shaver in view of Campbell discloses the side truss assembly of claim 1 or 2 as discussed above, and Shaver further discloses that the corrugated panel is of stainless steel (see col. 6, lines 12-14, wherein it states that "[t]he corrugated panels 28, 30 are typically formed of stainless steel, galvanized steel, aluminum or other appropriate metal").

As to claim 4, Shaver in view of Campbell discloses the side truss assembly of claim 3 as discussed above, and Campbell discloses a corrugated panel and stiffener assembly (see Fig. 1) wherein at least one intermediate bracket (28) is affixed to the corrugated panel (10) for supporting a roller assembly of the escalator.

As to claim 5, Shaver in view of Campbell discloses the side truss assembly of claim 3 as discussed above, and Campbell discloses a corrugated panel and stiffener assembly (see Fig. 1) wherein the stiffeners (12) are fastened to the corrugated panel (10) by welds (see col. 2, lines 48-50 wherein it states that "[t]he channels 12 are welded or bonded to the unit 10 at contacting parts thereof.").

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the escalator side truss of Shaver to have the stiffeners fastened to the corrugated panels by welds as taught by Campbell in order to have a stronger connection since more of the contact area is fastened to each other than is the case with connection by bolt and nuts.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell (U.S. Patent No. 3,481,643) in view of Shaver (U.S. Patent No. 6,079,168).

As to claim 3, Campbell discloses the side truss assembly of claim 1 or 2 as discussed above, but Campbell fails to explicitly disclose that the corrugated panel is of stainless steel (see col. 2, lines 9-10 wherein it states that “[t]he chassis unit 10 preferably constitutes a corrugated member, preferably formed of sheet metal”, but does not explicitly say stainless steel).

Shaver discloses that the corrugated panel is of stainless steel (see col. 6, lines 12-14, wherein it states that “[t]he corrugated panels 28, 30 are typically formed of stainless steel, galvanized steel, aluminum or other appropriate metal . . .”).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the escalator side truss assembly of Campbell to make the corrugated panel be made of stainless steel as taught by Shaver in order to better resist rusting.

As to claim 4, Campbell in view of Shaver discloses the side truss assembly of claim 3 as discussed above, and Campbell (see Fig. 1) discloses that at least one intermediate bracket (28) is affixed to the corrugated panel (10) for supporting a roller assembly of the escalator.

As to claim 5, Campbell in view of Shaver discloses the side truss assembly of claim 3 as discussed above, and Campbell (see Fig. 1) discloses that the stiffeners (12) are fastened to the corrugated panel (10) by welds (see col. 2, lines 48-50 wherein it

states that "[t]he channels 12 are welded or bonded to the unit 10 at contacting parts thereof.").

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaver (U.S. Patent No. 6,079,168) in view of Campbell (U.S. Patent No. 3,481,643), as applied to claim 3 above, and further in view of Bukaitz et al. (U.S. Patent No. 3,887,085).

As to claim 6, Shaver in view of Campbell discloses the side truss assembly of claim 3 as discussed above, and Shaver further discloses that the side truss assembly is of a parallelogram shape (i.e., two sets of parallel sides) with a rectangular corrugated panel (Fig. 12).

However, Shaver in view of Campbell fails to explicitly disclose that the rectangular corrugated panel of the side truss assembly is located adjacent to a trapezoidal end panel at an end of the corrugated panel and between the stiffeners.

Bukaitz et al. discloses an assembly wherein the rectangular corrugated panel (see Figs. 5 and 6A) is located adjacent to a trapezoidal end panel (50) at an end of the corrugated panel and between the stiffeners.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the escalator side truss assembly of Shaver in view of Campbell to include the trapezoidal end panel of Bukaitz et al. in order to provide for irregular shaped panel assemblages as needed.

As to claim 7, Shaver in view of Campbell and Bukaitz et al. discloses the side truss assembly of claim 6 as discussed above, but Shaver in view of Campbell and Bukaitz et al. fail to explicitly disclose that the end panel is fastened to the stiffeners and corrugated panel by welds.

Instead, Fig. 5 of Bukaitz et al. shows the end panel fastened to the stiffeners and corrugated panels by a friction fit and Fig. 6A of Bukaitz et al. shows the end panel fastened to the stiffeners by screw fasteners and to the adjacent panels by the use of flange and channel friction or snap fit.

However, it is well settled that “[g]enerally, it is not invention to change size or degree of thing or of any feature or function of machine or manufacture; there is no invention where change does not involve different concept, purposes, or objects, but amounts to doing the same thing substantially the same way with better results.” (See *Hobbs v. Wisconsin Power and Light Company et al.*, 115 USPQ 371 (CA 1957).) Thus, since connecting the end panels by welding amounts to doing the same thing as connecting the end panels by friction fit or screw fasteners in substantially the same way with substantially the same results, the welding of the end panels to the stiffeners and corrugated panels would have constituted a further obvious expedient to one having ordinary skill in the art at the time the invention was made since it is well founded that merely changing type of connection to another equivalent type of connection is not unobvious. (See *Brunswick Corporation v. Champion Spark Plug Company*, 216 USPQ 1 (CA 7 1982)).

As to claim 8, Shaver in view of Campbell and Bukaitz et al. discloses the side truss assembly of claim 6 as discussed above, and Bukaitz et al. further disclose that the end panel is of trapezoidal shape (see end panel 50 in Fig. 5 and Fig. 6A).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the escalator side truss assembly of Shaver in view of Campbell to include the trapezoidal end panel of Bukaitz et al. in order to provide for irregular shaped panel assemblages as needed.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell (U.S. Patent No. 3,481,643) in view of Shaver (U.S. Patent No. 6,079,168), as applied to claim 3 above, and further in view of Bukaitz et al. (U.S. Patent No. 3,887,085).

As to claim 6, Campbell in view of Shaver discloses the side truss assembly of claim 3 as discussed above, and Campbell in view of Shaver further discloses that the side truss assembly is of a parallelogram shape (i.e., two sets of parallel sides) with a rectangular corrugated panel.

However, Campbell in view of Shaver fails to explicitly disclose that the rectangular corrugated panel of the side truss assembly is located adjacent to a trapezoidal end panel at an end of the corrugated panel and between the stiffeners.

Bukaitz et al. discloses an assembly wherein the rectangular corrugated panel (see Figs. 5 and 6A) is located adjacent to a trapezoidal end panel (50) at an end of the corrugated panel and between the stiffeners.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the escalator side truss assembly of Campbell in view of Shaver to include the trapezoidal end panel of Bukaitz et al. in order to provide for irregular shaped panel assemblages as needed.

As to claim 7, Campbell in view of Shaver and Bukaitz et al. discloses the side truss assembly of claim 6 as discussed above, but Campbell in view of Shaver and Bukaitz et al. fails to explicitly disclose that the end panel is fastened to the stiffeners and corrugated panel by welds.

Instead, Fig. 5 of Bukaitz et al. shows the end panel fastened to the stiffeners and corrugated panels by a friction fit and Fig. 6A of Bukaitz et al. shows the end panel fastened to the stiffeners by screw fasteners and to the adjacent panels by the use of flange and channel friction or snap fit.

However, it is well settled that “[g]enerally, it is not invention to change size or degree of thing or of any feature or function of machine or manufacture; there is no invention where change does not involve different concept, purposes, or objects, but amounts to doing the same thing substantially the same way with better results.” (See

Hobbs v. Wisconsin Power and Light Company et al., 115 USPQ 371 (CA 1957).)

Thus, since connecting the end panels by welding amounts to doing the same thing as connecting the end panels by friction fit or screw fasteners in substantially the same way with substantially the same results, the welding of the end panels to the stiffeners and corrugated panels would have constituted a further obvious expedient to one having ordinary skill in the art at the time the invention was made since it is well founded

that merely changing the type of connection to another equivalent type of connection is not unobvious. (See *Brunswick Corporation v. Champion Spark Plug Company*, 216 USPQ 1 (CA 7 1982)).

As to claim 8, Campbell in view of Shaver and Bukaitz et al. discloses the side truss assembly of claim 6 as discussed above, and Bukaitz et al. further discloses that the end panel is of triangular or trapezoidal shape (see end panel 50 in Fig. 5 and Fig. 6A).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the escalator side truss assembly of Campbell in view of Shaver to include the trapezoidal end panel of Bukaitz et al. in order to provide for irregular shaped panel assemblages as needed.

Response to Arguments

Applicant's arguments filed 03 October 2005 have been fully considered but they are not persuasive for the following reasons.

Applicant's argument with regard to what the, (or a), preamble defines is not convincing. The instantly rejected claims define nothing more than a panel per se which is met by the applied references, alone or as modified. Otherwise, it is not seen how the "preamble" of claim 1 serves to define "a standing support for the weight of the components of...[an] escalator assembly". Only a corrugated panel with "stiffeners" is defined in claim 1.

Applicant's arguments as to the different use of the panel disclosed by the applied prior art do not serve to distinguish a claim to a panel from that of the prior art, alone or as modified. Certainly any of the panels of Campbell, Shaver, and Bukaitz are structurally sound and can be utilized upon a substrate in a vertically standing orientation. To this end, Applicant's remarks that either of Shaver and Campbell are "not designed to stand and support a downward force" appear as mere conjecture.

As for Applicant's arguments from the middle of page 8 to the middle of page 9 of the response, the instantly rejected claims are directed to a panel per se. As such, each of Campbell, Shaver, and Bukaitz are analogous to the instantly claimed invention.

Otherwise Applicant's remarks from page 8 to page 9 do not appear commensurate with the claimed invention. For example, Applicant's remark that an "escalator strut by its nature cannot have any type of lengthy horizontal structure for supporting the escalator assembly" does not appear commensurate with either the rejections or the instant claims with claims 1-8 being directed to a panel per se. In other words, the instant claims do not set forth any construction or environment defining an "escalator", with or without any further structural elements, which would serve to define over the applied prior art, alone or as modified.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)-272-7731. The examiner can normally be reached on Monday through Thursday, 8:30 am to 7:00 pm.

The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Art Unit: 3673

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

^{GAS}
Gay Ann Spahn, Patent Examiner
November 29, 2005



MICHAEL SAFAV
PRIMARY EXAMINER
ART UNIT 352